

DEPARTMENT OF STATE REVENUE

Revenue Ruling 98-05 IT

August 18, 1998

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

Treatment of Federal Motor Fuel Taxes for Gross Income Tax Purposes

Authority: IC 6-2.1-2-2, 45 IAC 1-1-128

Taxpayer requests the Department to rule on the inclusion or exclusion of federal motor fuel tax in the taxable base when computing Indiana Gross Income Tax.

STATEMENT OF FACTS

Taxpayer is engaged in the business of refining and selling motor fuel. Taxpayer collects federal excise tax on gasoline, diesel fuel, and kerosene.

DISCUSSION

Pursuant to IC 6-2.1-2-2, an income tax, known as the gross income tax, is imposed upon the receipt of: (1) the entire taxable gross income of a taxpayer who is a resident or a domiciliary of Indiana; and (2) the taxable gross income derived from activities or businesses or any other sources within Indiana by a taxpayer who is not a resident or a domiciliary of Indiana.

Taxes imposed and paid by the taxpayer are considered part of the taxable base for gross income tax purposes. However, taxes collected from a tax imposed on other parties are

not part of the taxable base. Indiana Regulations clearly set out that taxes collected as an agent are not subject to gross income tax.

Pursuant to 45 IAC 1-1-128, "taxes received or collected by a taxpayer as an agent for the State of Indiana or the United States are not subject to gross income tax. A person is not an "agent" within the meaning of this section unless the statute imposing the tax explicitly designates him as such. If tax is collected as an agent by one (1) taxpayer who passes the cost on to a second taxpayer, and he on to the ultimate consumer, the second taxpayer may not deduct the tax from his gross receipts unless he, as well as the first taxpayer, is designated as an agent under the statute which provides for collection of the tax. Examples of taxes deductible by sellers acting as collecting agents of the state include the sales tax, motor fuel tax, cigarette tax and motor fuel use tax. An example of a tax not deductible under this subsection is the alcoholic beverage tax. In all cases where deductions of this kind are taken, a full statement of the facts and nature of the tax must accompany the return." As stated in the Department's Rules, motor fuel taxes are deductible when calculating Indiana gross income tax.

Furthermore, the Department's proposed rule, 45 IAC 1.1-3-6, effective January 1, 1999, provides that except as otherwise provided, a tax that a taxpayer is required to collect as a collecting agent for Indiana or the federal government is exempt from the gross income tax. Taxes exempt from the gross income tax include the "Indiana motor fuel tax, federal motor fuel taxes (gasoline and diesel fuel), and Indiana special fuel tax," among others.

RULING

The Department rules that federal motor fuel taxes paid by the taxpayer are deductible in arriving at its base for Indiana gross income tax.

CAVEAT

This ruling is issued to the taxpayer requesting it on the assumption that the taxpayer's facts and circumstances, as stated herein, are correct. If the facts and circumstances given are not correct, or if they change, then the taxpayer requesting this ruling may not rely on it. However, other taxpayers with substantially identical factual situations may rely on this ruling for informational purposes in preparing returns and making tax decisions. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material respect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that subsequent to the publication of this ruling, a change in a statute, a regulation, or case law could void the ruling. If this occurs, the ruling will not afford the taxpayer any protection.

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